

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION No 625 of 1995

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the Judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SRI SANAND TEXTILE INDUSTRIES LTD.
VERSUS
SHRI AMBICA YARN TRADING CO.

Appearance:

MR AV TRIVEDI for MR AC GANDHI for Petitioner
MR VH DESAI for Respondent

CORAM : MR JUSTICE S.K. KESHOTE
Date of decision: 03/02/1999

C.A.V. JUDGMENT

Heard the learned counsel for the parties.

2. This revision application arises from the order of the City Civil Court dated 17th February, 1995 under which the leave to defend has been granted to the petitioner on condition of deposit of Rs.8 lacs in the court on or before 31st March, 1995.

3. Manifold contentions have been raised by the learned counsel for the defendant-petitioner challenging that order but as this revision application deserves to be accepted only on the ground that a non-speaking order has been passed by the learned trial court to grant conditional leave to defend to the defendant-petitioner in the suit I do not consider it to be appropriate to advert to all those contentions raised.

4. I find from the order that it is a stereotype order in which only blanks have been filled in. This order cannot be taken to be a speaking order. It is not out of context to state that the Apex Court has given out guidelines which are to be followed while considering the matter of grant of leave to defend in the summary suit to the defendant i.e. whether it should be granted unconditionally or with some conditions. In this case, learned counsel for the defendant-petitioner contended that the defendant raised many important and substantial defence in the suit and as such it was a case where unconditional leave should have been granted.

5. Learned counsel for the plaintiff-respondent, on the other hand, is unable to say anything against this point that the order is non-speaking. He felt contended to say that it is not the case decided and the revision application is not maintainable. In case where conditional leave to defend has been granted then in case that condition is not fulfilled the Court will pass the decree. In that case, that decree has to be challenged and as it will be a money decree then there will be many other difficulties for challenging the same. So in case by non-speaking orders condition has been imposed granting leave to defend it may have manifold repercussions and it is expected of the courts below to pass speaking orders. Only where the court has come to the conclusion that the defence sought to be raised by the defendant against this claim of plaintiff is wholly untenable or vexatious then only in that case conditional leave may be granted but otherwise the Court may grant unconditional leave. So this aspect has to be gone into carefully and before grant of leave on condition the Court has to record its satisfaction that it is a case which clearly falls under the category of

defence is sham or illusory or vexatious.

6. Only on this short ground this revision application deserves to be allowed.

7. In the result, this revision application succeeds and the same is allowed. The order dated 17th February, 1995 of the City Civil Court, Ahmedabad in Summary Suit No.99/93 is quashed and set aside. Learned trial court is directed to decide the application filed by the defendant-petitioner for grant of leave to defend after hearing both the parties in accordance with law. Rule is made absolute accordingly.

zgs/-